US EPA RECORDS CENTER REGION 5
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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF MINNESOTA, by its Attorney General Hubert H. Humphrey, III, its Department of Health, and its Pollution Control Agency,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION; HOUSING AND REDEVELOPMENT AUTHORITY OF ST. LOUIS PARK; OAK PARK VILLAGE ASSOCIATES; RUSTIC OAKS CONDOMINIUM, INC.; and PHILLIP'S INVESTMENT CO.,

Defendants,

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

Civil No. 4-80-469

REILLY TAR & CHEMICAL CORPORATION'S MEMORANDUM IN OPPOSITION TO THE CITY OF ST. LOUIS PARK'S MOTION TO COMPEL ANSWERS TO REQUESTS FOR ADMISSION AND INTERROGATORY

I. INTRODUCTION

The City of St. Louis Park ("City") has brought a Motion to compel Reilly Tar & Chemical Company ("Reilly") to answer more fully, or at least more to the City's satisfaction, certain requests for admission which the City served on Reilly in June 1983. Reilly originally responded to those requests for admission on July 14, 1983. The City has brought this motion apparently because it is unhappy with Reilly's July 14, 1983, response.

As a result of discussions between counsel for Reilly and the City concerning Reily's original response, Reilly has prepared an amended response to the requests for admission. This amended response is dated May 23, 1984, and has been served on all parties. A copy of the amended response is attached to this Memorandum. Even though counsel for the City was aware that the amended response had been prepared, counsel for the City have decided to press on with this motion anyway.

In those same discussions between counsel, counsel for Reilly and the City agreed that Reilly will have additional time to answer the interrogatory which was attached to the City's request for admission. That interrogatory will require considerable time to answer because it demands that Reilly provide detailed information to substantiate each denial and qualification

of the forty-six requests for admission. Counsel have also agreed that the City will not seek to compel the answer to that interrogatory in this motion.

The fact that Reilly has served the amended response and the fact that the parties have agreed that Reilly may have more time to put together its answer to the interrogatory render much of the City's memorandum irrelevant and the City's motion moot. Rather than focusing on all of the City's now largely extraneous arguments, this Memorandum shall explain why the amended response is valid under Fed. R. Civ. P. 36. Because the City has sought relief with respect to thirty-four of the forty-six Reilly original responses, this Memorandum shall address issues which pertain only to those thirty-four responses. Specifically, those responses are to requests 1, 2, 4, 6-8, 10-17, 20, 23-28, 30, 31, 33-42, and 46.

II. ARGUMENT

Fed. R. Civ. P. 36(a) provides in pertinent part that "when good faith requires the party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny

the remainder." By the nature of the City's requests, Reilly has found it necessary to abide by the above-quoted section of Rule 36 by qualifying its responses to many of the City's requests. The large majority of the City's requests for admission are conclusory statements couched in terms which the City has chosen to advance its theories of the case. When faced with admitting or denying these requests for admissions, Reilly has willingly admitted various facts which underlie the City's requests but has refused to adopt the City's wording. By bringing this motion the City has demonstrated that it is not so much interested in obtaining Reilly's admission of certain facts as it is interested in getting Reilly to stipulate in effect to the City's chosen interpretations of those facts. Reilly has a right under Rule 36 to qualify its responses, and it has done so.

The correctness of Reilly's decision to qualify its responses and its refusal to adopt the City's precise wording of the requests is seen when one analyzes what sanctions, if any, might be imposed against Reilly if the jury were eventually to find in the City's favor on these points. If upon such rulings by the jury the City was immediately entitled to recover its expenses under Rule 37(c) becasue Reilly had failed to admit these request without qualification, then Reilly's position at this point would be somewhat tenuous. However, under Rule 37(c) a court shall not grant fees and expenses if it finds that "the party failing to admit had reasonable grounds to be-

lieve that he might prevail on the matter." In other words, a court should grant fees and expenses under Rule 37(c) only if it finds that, upon the evidence presented by the party who had originally sought a request for admission, that party is entitled to a directed verdict. See Shapiro, "Some Problems of Discovery in an Adversary System," 63 Minn. L. Rev. 1055, 1087-88 (1979). Reilly is confident that the facts it has admitted are capable of differing interpretation by reasonable persons and that, as a result, Reilly will get to the jury on these issues of interpretation. For that reason Reilly will avoid Rule 37(c) sanctions. Therefore, Reilly's qualifications of its responses are valid and appropriate.

The propriety of Reilly's decision to qualify its responses is further seen in its responses to requests 1, 11, 12, 14, 23-25, and 41. In each of those requests the City has asked Reilly first to admit the authenticity of a referenced document and then to admit the City's interpretation of the contents of that document. In each instance, Reilly has willingly admitted the authenticity of the document. Reilly has thus achieved a goal of Rule 36 by relieving the City of the burden of proving authenticity of the documents which in turn will save time and expense at trial. However, while the City may ask Reilly to admit to the City's interpretation of the documents,

Reilly is fully within its rights to assert that the documents speak for themselves. Reilly is willing to let the documents and the information contained therein be presented to the jury at trial; however, Reilly is unwilling to forego its rights to argue to the jury exactly how the jury should interpret the information contained in those documents. Therefore, Reilly's qualifications of its admissions concerning the meaning of certain documents are justified and warranted. See Milgram Food Stores, Inc., v. United Stores, 558 F. Supp. 629, 634 (W.D.Mo. 1983)(responding party need not admit "exact wording" of request for admission).

One recurring problem with the City's requests for admissions is that the statements which the City wants Reilly to admit or deny contain assumptions which Reilly contends are not true. For example, in request 36 the City wants Reilly to admit or deny that it had never told the City prior to June 19, 1973, that certain of the products manufactured by Reilly contained "carcinogens, carcinogenic compounds, PAHs, or other non-phenolic substances harmful to public health." Similarly in request 46, the City wants Reilly to admit that coal tar in the Republic Deep Well is "a contributing source of carcinogenic contamination of the City's drinking water supply." Both of these requests assume that Reilly"s products

contain carcinogens. To simply admit or deny these requests without qualifying the fact that Reilly disagrees with that assumption is impossible. These and similar requests are akin to demanding that a man answer yes or no to whether he has stopped beating his wife yet when in fact the man is not a wife-beater. To demand a yes or no answer of the man is unfair. Similarly, to demand that Reilly admit or deny without qualification is unfair as well. See Knowlton v. Atchison, Topeka, & Santa Fe Ry., 11 F.R.D. 62, 66 (W.D.Mo. 1951)(requests for admissions of half-truths are improper).

Reilly's response to request 13 and the City's dissatisfaction therewith highlight another recurring problem concerning these requests. In request 13 the City has asked Reilly to admit that "Reilly Tar understood that the cessation of its plant air emission and plan effluents, resulting from the closing of its operations, would resolve the claims asserted against it in the 1970 litigation." Reilly began its response by noting that the phrase "Reilly Tar understood" is vague and ambiguous because Reilly has had "many officers and employees over the years, each of whom had varying degrees of information and knowledge." As set out in its response to request 2 and as incorporated in its response to request 13, Reilly is willing to admit

and to have the jury know that various Reilly personnel were aware of various scientific reports which concluded that certain constituents of coal tar were toxic in sufficiently large doses. Reilly is also willing to admit and to let the jury know that some Reilly personnel knew that some scientists held the view that there was a correlation between exposure to coal tar and health problems. However, to stipulate that "Reilly Tar knew" or that "Reilly Tar understood" or that "Reilly Tar had no knowledge" with repsect to various facts at any given time would serve to mislead the jury. See Amended Response to Requests 2, 7, 8, 10, 13, 15-17, 27, 34, 38, 39, and 41. Therefore, Reilly will not admit to such statements without qualifications which more accurately reflect the state of knowledge held by various employees of Reilly.

In its response to request 13, Reilly went on to deny the request and to explain exactly why it was doing so. Reilly denied that it believed that closing its plant would resolve the 1970 litigation and stated further that Reilly anticipated that the 1970 litigation, by dealing with financial responsibilities for correcting soil and water contamination, would be unaffected by the ceasing of operations. Under Rule 36, Reilly could have simply denied the request and let it go at that.

However, Reilly chose to give more information than was required of it. The fact that the City has chosen to take issue with Reilly's thorough response to this and other requests reveals that the City is motivated to bring this motion not because of any alleged failure on Reilly's part to comply with Rule 36. Rather, the city appears to be motivated by the simple fact that Reilly's responses were not what the City wanted to hear.

Reilly's admitted responses have been made in good faith and reflect Reilly's intent to explain to the City at every turn what its position is on each issue. Indeed, Reilly has met the burden of Rule 36 by "fairly meet[ing] the substance of the requested admission[s]." Reilly has been willing to admit both facts and conclusions. Merely because Reilly has not willingly adopted all of the City's phraseology, Reilly has not violated any of its obligations under Rule 36.

If the Court should decide that any of Reilly's amended responses do not comply with the requirements of Rule 36, rather than granting the City's motion and ordering that those requests be deemed admitted, the Court may pursuant to Rule 36 hold the final determination of the requests in abeyance until the final pre-trial conference at which time the parties will be engaging in broad-ranging stipulations of fact.